

HOUSE BILL 2255

By Briley

AN ACT to amend Tennessee Code Annotated, Title 56,
Chapter 7 8, relative to the regulation of unfair
trade practices and unfair claims settlement
practices in the business of insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tenn. Code Ann. Title 56, is amended by deleting Chapter 8, Part 1 in its entirety and by adding Sections 2 through 14 as a new Part 1.

SECTION 2. Title and Purpose. This Act is titled and may be cited as "The Tennessee Unfair Trade Practices Act of 2007." The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress) and the Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress), by defining, or providing for the determination of, all such practices in this state that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. Nothing herein shall be construed to create or imply a private cause of action for a violation of this Act.

Section 3. Definitions. When used in this Act:

- (1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company.
- (2) "Commissioner" means the commissioner of commerce and insurance.
- (3) "Customer" means an individual who purchases, applies to purchase, or is solicited to purchase insurance products.
- (4) "Depository institution" means a bank or savings association. The term depository institution does not include an insurance company.

(5) "Fictitious grouping" means any grouping by way of membership, nonmembership, license, franchise, employment, contract, agreement or any other method or means.

(6) "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy.

(7) "Insurer" means any person, reciprocal exchange, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including producers, and adjusters. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, hospital medical service corporations, dental, optometric and other similar health service plans, including those plans under referenced in Section 56-2-121(a). For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance.

(8) "Person" means a natural or artificial entity, including but not limited to, individuals, partnerships, associations, trusts or corporations.

(9) "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.

(10) "Producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance under Title 56, Chapter 6, Part 1.

SECTION 4. Unfair Trade Practices Prohibited. No person shall engage in an unfair trade practice which is defined in Section 5 or 6 of this Act or determined pursuant to Section 8 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

SECTION 5. Unfair Trade Practices Defined. The following practices are hereby defined as unfair trade practices in the business of insurance:

(a) Misrepresentations and False Advertising of Insurance Policies. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustration, circular or statement, sales presentation, omission or comparison that:

(1) Misrepresents the benefits, advantages, conditions or terms of any policy; or

(2) Misrepresents the dividends or share of the surplus to be received on any policy; or

(3) Makes a false or misleading statement as to the dividends or share of surplus previously paid on any policy; or

(4) Is misleading or is a misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates; or

(5) Uses any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(6) Is a misrepresentation, including any intentional misquote of premium rate, for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion or surrender of any policy; or

(7) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(8) Misrepresents any policy as being shares of stock.

(b) False Information and Advertising Generally. Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in a

newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any insurer in the conduct of its insurance business, which is untrue, deceptive or misleading.

(c) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false, or maliciously critical of or derogatory to the financial condition of any insurer, and which is calculated to injure such insurer.

(d) Boycott, Coercion and Intimidation. Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

(e) False Statements and Entries.

(1) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer.

(2) Knowingly making any false entry of a material fact in any book, report or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report or statement of such insurer, or knowingly making any false material statement to any insurance department official.

(f) Stock Operations and Advisory Board Contracts. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to purchase insurance.

(g) Unfair Discrimination.

(1) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy.

(2) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner.

(3) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

(4) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property.

(5) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, marital status, income, educational background, race, religion or national origin of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Nothing in this section shall prohibit or limit the operation of fraternal benefit societies.

(6) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to accident and health insurance sold by a casualty insurer and, provided further, that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.

(7) Refusing to insure solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the named insured. Nothing herein contained shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance.

(h) Rebates.

(1) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any policy of insurance, including but not limited to any life insurance policy or annuity, or accident and health insurance or other insurance, or agreement as to such contract other than as plainly expressed in the policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such policy, any rebate of premiums payable on the policy,

or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the policy.

(2) Nothing in Subsection (g), or Paragraph (1) of Subsection (h) of this Section shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) In the case of life insurance policies or annuities, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders;

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount that fairly represents the saving in collection expenses;

(C) Readjusting the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year; or

(D) Engaging in an arrangement that would not violate Section 106 of the Bank Holding Company Act Amendments of 1972 (12 U.S.C. 1972), as

interpreted by the Board of Governors of the Federal Reserve System, or Section 5(q) of the Home Owners' Loan Act, 12 U.S.C. 1464(q).

(i) Prohibited Group Enrollments. No insurer shall offer more than one group policy of insurance through any person unless such person is licensed, at a minimum, as a limited lines producer. However, this prohibition shall not apply to employer/employee relationships, nor to any such enrollments.

(j) Failure to Maintain Marketing and Performance Records. Failure of an insurer to maintain its books, records, documents and other business records in such an order that data regarding complaints, claims, rating, underwriting and marketing are accessible and retrievable for examination by the insurance commissioner. Data for at least the current calendar year and the two (2) preceding years shall be maintained.

(k) Failure to Maintain Complaint Handling Procedures. Failure of any insurer to maintain a complete record of all the complaints it received since the date of its last examination under Section 56-1-408. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance.

(l) Misrepresentation in Insurance Applications. Making false or fraudulent statements or representations on or relative to an application for a policy, for the purpose of obtaining a fee, commission, money or other benefit from any provider or individual person.

(m) Unfair Financial Planning Practices. An insurance producer:

(1) Holding himself or herself out, directly or indirectly, to the public as a "financial planner," "investment adviser," "consultant," "financial counselor," or any other specialist engaged in the business of giving financial planning or advice relating to investments, insurance, real estate, tax matters or trust and estate matters when such

person is in fact engaged only in the sale of policies. This provision does not preclude persons who hold some form of formal recognized financial planning or consultant certification or designation from using this certification or designation when they are only selling insurance. This does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

(2) (A) Engaging in the business of financial planning without disclosing to the client prior to the execution of the agreement provided for in Paragraph (3), or solicitation of the sale of a product or service that

(i) He or she is also an insurance salesperson, and

(ii) That a commission for the sale of an insurance product will be received in addition to a fee for financial planning, if such is the case.

(B) The disclosure requirement under this subsection may be met by including it in any disclosure required by federal or state securities law.

(3) (A) Charging fees other than commissions for financial planning by insurance producer, unless such fees are based upon a written agreement, signed by the party to be charged in advance of the performance of the services under the agreement. A copy of the agreement must be provided to the party to be charged at the time the agreement is signed by the party.

(i) The services for which the fee is to be charged must be specifically stated in the agreement.

(ii) The amount of the fee to be charged or how it will be determined or calculated must be specifically stated in the agreement.

(iii) The agreement must state that the client is under no obligation to purchase any insurance product through the insurance producer or consultant.

(B) The insurance producer shall retain a copy of the agreement for not less than three (3) years after completion of services, and a copy shall be available to the commissioner upon request.

(n) Failure to file or to certify information regarding the endorsement or sale of long-term care insurance. Failure of any insurer to:

(1) File with the insurance department the following material:

(A) The policy and certificate;

(B) A corresponding outline of coverage; and

(C) All advertisements requested by the insurance department; or

(2) Certify annually that the association has complied with the responsibilities for disclosure, advertising, compensation arrangements, or other information required by the commissioner, as set forth by regulation.

(o) Failure to Provide Claims History.

(1) Loss Information—Property and Casualty. Failure of a company issuing property and casualty insurance to provide the following loss information for the three (3) previous policy years to the first named insured within thirty (30) days of receipt of the first named insured's written request:

(A) On all claims, date and description of occurrence, and total amount of payments; and

(B) For any occurrence not included in Subparagraph(i) of this paragraph, the date and description of occurrence.

(2) Should the first named insured be requested by a prospective insurer to provide detailed loss information in addition to that required under Paragraph (1), the first named insured may mail or deliver a written request to the insurer for the additional information. No prospective insurer shall request more detailed loss information than

reasonably required to underwrite the same line or class of insurance. The insurer shall provide information under this subparagraph to the first named insured as soon as possible, but in no event later than twenty (20) days of receipt of the written request. Notwithstanding any other provision of this section, no insurer shall be required to provide loss reserve information, and no prospective insurer may refuse to insure an applicant solely because the prospective insurer is unable to obtain loss reserve information.

(3) The commissioner may promulgate regulations to exclude the providing of the loss information as outlined in Paragraph (1) for any line or class of insurance where it can be shown that the information is not needed for that line or class of insurance, or where the provision of loss information otherwise is required by law.

(4) Information provided under Paragraph (2) shall not be subject to discovery by any party other than the insured, the insurer and the prospective insurer.

(p) Unfair Replacement Transaction Practices.

(1) With respect to any policy of life insurance in a replacement transaction, as the term has been defined by the commissioner:

(A) In the case of any insurer, failing to provide an unconditional refund offer of at least twenty (20) days from the date of delivery of the policy;

(B) In the case of any insurer, failing to send by certified or registered mail any notice required by statute or rule to an existing insurer; or

(C) In the case of a life insurance agent, failing to give notice to an applicant for life insurance of the adverse consequences which may result from surrendering an existing life insurance policy prior to the determination of insurability by the replacing insurer. The notice shall be in the form prescribed by the commissioner and receipt of such notice shall be acknowledged by signature

of the applicant. A copy of the signed notice shall be provided to the existing insurer in accordance with rules adopted by the commissioner.

(2) In addition to the practices described in Subdivisions (p)(1)(A)-(C), the commissioner shall establish by regulation additional requirements with respect to replacement transactions which are effected by a life insurance agent who has been licensed less than one hundred twenty (120) days. Such additional requirements shall include a prohibition against such agent taking an application for a life insurance policy in a replacement transaction prior to the existing company receiving reasonable notice of the proposed transaction.

(q) Unfair Utilization of Proprietary Information. With respect to any policy of insurance underwritten in a pool, residual market mechanism, joint underwriting authority or assigned risk plan, any information contained in a policy application and/or obtained in the servicing of such a policy of insurance cannot be used in any manner by the servicing carrier or its representatives for the purpose of soliciting any form of insurance, except when permission to use such information is granted by the commissioner on any specific risk.

(r) Changing Classification and Rate After Policy Expiration or Renewal. With respect to commercial risk insurance, making a change in the classification or rates more than one (1) year after the renewal or expiration date of that policy without the written consent of the insured. This provision does not apply where the insured has failed to cooperate, given misleading information, or made material misrepresentations or omissions. Nothing herein shall prohibit an insurer from making such change where the policy specifically allows for such change.

(s) Preferences or Distinctions in Certain Insurance Transactions prohibited.

(1) Making, offering to make, or permitting any preference or distinction in property, marine, casualty, or surety insurance as to form or policy, certificate, premium,

rate, benefits, or conditions of insurance, based upon membership, nonmembership, or employment of any person or persons by or in any particular group, association, corporation, or organization, or making such preference or distinction available in any event based upon any fictitious grouping of persons.

(2) The restrictions and limitations of this Subsection do not extend or apply to life, health and accident, disability or workers' compensation insurance or to plans to provide legal services. Nothing in this subsection shall apply to any domestic company which confines its insurance business and operations to this state and to the providing of insurance solely for the benefit of its members, or members of its parent or sponsoring organization.

(3) Notwithstanding any other provision of this title, dues paid before or after March 22, 1996, to a non-profit association, membership in which entitles the members to apply for insurance from insurance companies described in Subsection (2), shall not be considered as gross premium or consideration for insurance.

(4) Notwithstanding any other provision of this title to the contrary, an insurer may make, offer to make, or permit a preference or distinction in property, marine, casualty or surety insurance as to form or policy, certificate, premium, rate, benefits or conditions of insurance based upon membership in an association of professionals with more than five thousand (5,000) dues-paying members in Tennessee with members residing or practicing in at least eighty (80) counties within the state.

(t) Disclosure of nonpublic personal information.

(1) Disclosing nonpublic personal information contrary to the provisions of title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, or violating a rule lawfully promulgated hereunder.

(2) The commissioner shall not impose civil penalties against, or revoke or suspend the license of, a person who violates this Subsection unless the violator intentionally violated this Subsection or committed violations of this Subsection in sufficient number as to indicate a lack of the use of due diligence on the part of the violator in complying with this Subsection. For purposes of this Subsection, “nonpublic personal information” means nonpublic personal information as defined in title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102. For purposes of this Subsection, “person” means an entity or individual holding or required by law to hold a certificate of authority or license, or the functional equivalent thereof, under the Tennessee insurance law, title 56.

(3) Any rules and regulations promulgated pursuant to this Subsection shall be no more restrictive than title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

(u) Protection of members of the Armed Forces. Notwithstanding any other provision of this title, the commissioner shall have the authority to adopt such rules and regulations to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive or unfair.

SECTION 6. Favored Agent or Insurer; Coercion of Debtors.

(a) No person or depository institution, or affiliate of a depository institution may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any policy or renewal thereof through a particular insurer or group of insurers or agent or broker or group of agents or brokers. Further, no person or depository institution, or affiliate of a depository institution, may reject an insurance policy

solely because the policy has been issued or underwritten by a person who is not associated with the depository institution or affiliate when insurance is required in connection with a loan or extension of credit.

(b) No person or depository institution, or affiliate of a depository institution, who lends money or extends credit may:

(1) As a condition for extending credit or offering any product or service that is equivalent to an extension of credit, require that a customer obtain insurance from a depository institution or an affiliate of a depository institution, or a particular insurer or producer. However, this provision does not prohibit a person or depository institution, or affiliate of a depository institution, from informing a customer or prospective customer that insurance is required in order to obtain a loan or credit, or that loan or credit approval is contingent upon the procurement by the customer of acceptable insurance, or that insurance is available from the person or depository institution, or affiliate of a depository institution;

(2) Unreasonably reject a policy furnished by the customer or borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of a policy because it contains coverage in addition to that required in the credit transaction;

(3) Require that any customer, borrower, mortgagor, purchaser, insurer, broker or agent pay a separate charge, in connection with the handling of any policy required as security for a loan on real estate, or pay a separate charge to substitute the policy of one insurer for that of another. This paragraph does not include the interest that

may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document. Further, this paragraph does not apply to charges that would be required when the person or depository institution or affiliate of a depository institution is the licensed producer providing the insurance;

(4) Require any procedures or conditions of duly licensed producers or insurers not customarily required of those producers or insurers affiliated or in any way connected with the person who lends money or extends credit;

(5) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state is responsible for the insurance sales activity of, or stands behind the credit of, the person, depository institution or its affiliate;

(6) Use an advertisement or other insurance promotional material that would cause a reasonable person to mistakenly believe that the federal government or the state guarantees any returns on insurance products or is a source of payment on any insurance obligation of or sold by the person, depository institution or its affiliate;

(7) Act as a producer unless properly licensed in accordance with Section 56-6-103;

(8) Pay or receive any commission, brokerage fee or other compensation as a producer, unless the person holds a valid producer's license for the applicable class of insurance. However, an unlicensed person may make a referral to a licensed producer provided that the person does not discuss specific insurance policy terms and conditions. The unlicensed person may be compensated for the referral, however, in the case of a referral of a customer, the unlicensed person may be compensated only if the compensation is a fixed dollar amount for each referral that does not depend on whether the customer purchases the insurance product from the licensed producer. Furthermore,

any person who accepts deposits from the public in an area where such transactions are routinely conducted in the depository institution may receive for each customer referral no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(9) Solicit or sell insurance, other than credit insurance or flood insurance, unless the solicitation or sale is completed through documents separate from any credit transactions;

(10) Include the expense of insurance premiums, other than credit insurance premiums or flood insurance premiums, in the primary credit transaction without the express written consent of the customer;

(11) Solicit or sell insurance unless its insurance sales activities are, to the extent practicable, physically separated from areas where retail deposits are routinely accepted by depository institutions; or

(12) Solicit or sell insurance unless it maintains separate and distinct books and records relating to the insurance transactions, including all files relating to and reflecting consumer complaints.

(c) Every person or depository institution, or affiliate of a depository institution that lends money or extends credit and who solicits insurance primarily for personal, family or household purposes shall disclose to the customer in writing that the insurance related to the credit extension may be purchased from an insurer or producer of the customer's choice, subject only to the lender's right to reject a given insurer or agent as provided in Subsection (b)(2). Further, the disclosure shall inform the customer that the customer's choice of insurer or producer will not affect the credit decision or credit terms in any way, except that the depository institution may impose reasonable requirements concerning the creditworthiness of the insurer and the scope of coverage chosen as provided in Subsection (b)(2).

(d) (1) A depository institution that solicits, sells, advertises or offers insurance, and any person who solicits, sells, advertises or offers insurance on behalf of a depository institution or on the premises of a depository institution shall disclose to the customer in writing, where practicable and in a clear and conspicuous manner, prior to a sale, that the insurance:

(i) Is not a deposit;

(ii) Is not insured by the Federal Deposit Insurance Corporation or any other federal government agency;

(iii) Is not guaranteed by the depository institution, its affiliate (if applicable) or any person that is soliciting, selling, advertising or offering insurance (if applicable); and

(iv) Where appropriate, involves investment risk, including the possible loss of value.

(2) For purposes of these requirements, an affiliate of a depository institution is subject to these requirements only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a depository institution or on behalf of a depository institution. These requirements apply only when an individual purchases, applies to purchase, or is solicited to purchase insurance products or annuities primarily for personal, family or household purposes and only to the extent that the disclosure would be accurate.

(3) A depository institution that solicits, sells, advertises or offers insurance, and any person who solicits, sells, advertises or offers insurance on behalf of a depository institution or on the premises of a depository institution shall obtain written acknowledgement of the receipt of the disclosure from the customer at the time the customer receives the disclosure or at the time of the initial purchase of the insurance

policy. If the solicitation is conducted by telephone, the person or depository institution shall obtain an oral acknowledgement of receipt of the disclosure, maintain sufficient documentation to show that the acknowledgment was given by the customer, and make reasonable efforts to obtain a written acknowledgment from the customer. If a customer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the customer may retain or obtain later, the person or depository institution, may provide the disclosure and obtain acknowledgement of the receipt of the disclosure from the customer using electronic media.

(4) For the purposes of Paragraph (1), a person is selling, soliciting, advertising or offering insurance on behalf of a depository institution, whether at an office of the depository institution or another location, if at least one of the following applies:

(i) The person represents to the customer that the sale, solicitation, advertisement or offer of the insurance is by or on behalf of the depository institution;

(ii) The depository institution refers a customer to the person who sells insurance and the depository institution has a contractual arrangement to receive commissions or fees derived from the sale of insurance resulting from the referral; or

(iii) Documents evidencing the sale, solicitation, advertisement or offer of insurance identify or refer to the depository institution.

(e) The commissioner shall have the power to examine and investigate those insurance activities of any person, depository institution, affiliate of a depository institution or insurer that the commissioner believes may be in violation of this section. The person, depository institution, affiliate of a depository institution or insurer shall make its insurance books and records available to the commissioner and the commissioner's staff for inspection

upon reasonable notice. An affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(f) Nothing herein shall prevent a person or depository institution, or affiliate of a depository institution, who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

SECTION 7. Investigations and Examinations.

(a) The commissioner shall have power to examine and investigate the affairs of every person or insurer in this state in order to determine whether such person or insurer has been or is engaged in any unfair trade practice prohibited by this Act. However, in the case of depository institutions, the commissioner shall have the power to examine and investigate the insurance activities of depository institutions in order to determine whether the depository institution has been or is engaged in any unfair trade practice prohibited by this Act. The commissioner shall notify the appropriate federal or state banking agencies of the commissioner's intent to examine or investigate a depository institution and advise the appropriate federal or state banking agencies of the suspected violations of state law prior to commencing the examination or investigation.

(b) In the conduct of an examination, the criteria as set forth in the Market Conduct Examiners Handbook adopted by the National Association of Insurance Commissioners that was in effect when the commissioner exercised discretion to make an examination under or to take other action permitted by this Act shall be used. The commissioner may by rule also employ such other guidelines or procedures as the commissioner deems appropriate.

(c) All testimony, documents and other information submitted to the Commissioner pursuant to this Section, and all records and documents maintained pursuant to this Section shall be privileged and shall not be disclosed pursuant to Sections 10-7-503 or 56-1-602, nor

shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within her discretion, may share such documents and information with other state or federal agencies, or with any law enforcement authority.

SECTION 8. Hearings, Witnesses, Appearances, Production of Books, and Service of Process.

(a) Whenever the commissioner shall have reason to believe that any insurer, person, depository institution or affiliate of a depository institution has been engaged or is engaging in this state in any unfair trade practice whether or not defined in this Act, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such insurer, person, depository institution or affiliate of a depository institution, a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice. With respect to a depository institution, the commissioner's authority to call a hearing is limited to the depository institution's insurance underwriting, sales, solicitation and cross marketing activities. The commissioner shall provide a copy of the notice of hearing to the appropriate federal banking agency when a depository institution is involved.

(b) At the time and place fixed for the hearing, the insurer, person, depository institution or affiliate of a depository institution shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring the insurer, person, depository institution or affiliate of a depository institution to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at the hearing by counsel or in person.

(c) Nothing contained in this Act shall require the observance at the hearing of formal rules of pleading or evidence.

(d) The commissioner, at the hearing, may administer oaths, examine and cross examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence or other documents the commissioner deems relevant to the inquiry, provided, however, that in the case of depository institutions, the commissioner shall have the power to require the production of books, papers, records, correspondence or other documents that the commissioner deems relevant to the inquiry only on the insurance activities of the depository institution. The commissioner, may, and upon the request of any party, shall cause to be made a stenographic record of all the evidence and all the proceedings at the hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena or to testify with respect to any matter concerning which he may be lawfully interrogated, the Chancery Court of Davidson County or the county where the person resides, on application of the commissioner, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any order of the court may be punished by the court as contempt.

(e) Statements of charges, notices, orders and other processes of the commissioner under this Act may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by the statement, notice, order or other process at the person's residence or principal office or place of business. The verified return by the person so serving the statement, notice, order, or other process, setting forth the manner of service, shall be proof of the same, and the return postcard receipt for the statement, notice, order or other process, registered and mailed as specified, shall be proof of the service of the same.

SECTION 9. Cease and Desist and Penalty Orders, and Injunctions.

(a) If, after a hearing, the commissioner finds that an insurer, person, depository institution or affiliate of a depository institution has engaged in an unfair trade practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer, person, depository institution or affiliate of a depository institution charged with the violation, a copy of the findings in an order requiring the insurer, person, depository institution or affiliate of a depository institution to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion order:

(1) Payment of a monetary penalty of not more than \$1,000 for each violation, but not to exceed an aggregate penalty of \$100,000, unless the person knew or reasonably should have known the person was in violation of this Act, in which case the penalty shall not be more than \$25,000 for each violation not to exceed an aggregate penalty of \$250,000; and/or

(2) Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known that it was in violation of this Act.

(b) In the case of a depository institution, the commissioner shall, if practicable, notify the appropriate federal regulator before imposing a monetary penalty on a depository institution or suspending or revoking the depository institution's insurer's license, and provide to the federal regulator a copy of the findings.

(c) Whenever it appears to the commissioner that any person has violated or is about to violate this Act, or is violating or is about to violate an order lawfully entered by the commissioner pursuant to this Section, the commissioner may, in the commissioner's discretion, bring an action in the chancery court of Davidson County to enjoin such violation and to enforce compliance with this Act or any rule hereunder or any order lawfully entered pursuant to this Section. The court may not require the commissioner to post a bond.

SECTION 10. Judicial Review of Orders.

(a) An insurer, person, depository institution or affiliate of a depository institution subject to an order of the commissioner under Section 9 or Section 12 may obtain a review of the order by filing in the chancery court of Davidson County, within thirty (30) days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be served upon the commissioner, and thereupon the commissioner shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of the petition shall operate as a stay of the order of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing the order of the commissioner, in whole or in part.

(b) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the commissioner. If either party shall apply to the court for leave to introduce additional evidence, and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to introduce such evidence in the proceeding before the commissioner, the court may order additional evidence to be taken before the commissioner and to be introduced at the hearing in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify the findings of fact, or make new findings by reason of the additional evidence so taken, and shall file the modified or new findings with a recommendation if any, for the modification or setting aside of the original order, with the return of the additional evidence.

(c) An order issued by the commissioner under Section 9 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 10(b); or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(d) No order of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SECTION 11. Judicial Review by Intervenor. If after any hearing under Section 8 or Section 12, the report of the commissioner does not charge a violation of this Act, then any intervenor in the proceedings may within thirty (30) days after the service of the report, cause a petition for writ of certiorari to be filed in the Chancery Court of Davidson County for a review of the report. Upon review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of this Act, and containing penalties pursuant to Section 9.

SECTION 12. Penalty for Violation of Cease and Desist Orders. Any insurer, person, depository institution or affiliate of a depository institution that violates a cease and desist order of the commissioner and while such order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to:

(a) A monetary penalty of not more than \$25,000 for each and every act or violation not to exceed an aggregate of \$250,000 pursuant to any such hearing; and/or

(b) Suspension or revocation of the insurer's license.

SECTION 13. Regulations. The commissioner may, after notice and hearing, promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this Act. Such regulations shall be subject to review in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 14. Provisions of Act Additional to Existing Law. The powers vested in the commissioner by this Act shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

SECTION 15. Tenn. Code Ann. Title 56, is amended by adding Sections 16 through 26 as Part 2 to Chapter 8.

SECTION 16. Title and Purpose. This Act is titled and may be cited as "The Tennessee Unfair Claims Settlement Practices Act of 2007." The purpose of this Act is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of the State of Tennessee. Unless expressly stated, it is not intended to cover claims involving workers' compensation, fidelity, suretyship or boiler and machinery insurance. Nothing herein shall be construed to create or imply a private cause of action for violation of this Act.

SECTION 17. Definitions. When used in this Act:

- (1) "Commissioner" means the commissioner of commerce and insurance;
- (2) "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by the policy;
- (3) "Insurer" means a person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and third party administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited

health care service plans, dental, optometric and other similar health service plans, including those plans referenced in Section 56-2-121(a). For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance;

(4) "Person" means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations;

(5) "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, or annuity issued. "Policy" or "certificate" for purposes of this Act, shall not mean contracts of workers' compensation, fidelity, suretyship or boiler and machinery insurance. The Federal Employee Retirement Income Security Act (ERISA) preempts certain entities and some activities of those entities from the application of state laws. The purpose of these definitions is to include within this Act and regulations issued pursuant to it, all entities and activities to the extent not preempted by ERISA.

SECTION 18. Unfair Claims Practices Prohibited. It is an improper claims practice for a domestic, foreign or alien insurer transacting business in this state to commit an act defined in Section 19 of this Act if:

- (a) It is committed knowingly; or
- (b) It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

SECTION 19. Unfair Claims Practices Defined. Any of the following acts by an insurer, if committed in violation of Section 18, constitutes an unfair claims practice:

- (a) Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;
- (b) Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

- (c) Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;
- (d) Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- (e) Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- (f) Refusing to pay claims without conducting a reasonable investigation;
- (g) Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;
- (h) Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
- (i) Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- (j) Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;
- (k) Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- (l) Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;
- (m) Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use;

(n) Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or required to be used by the insurer are performed in a workmanlike manner; or

(o) Failing to make payment of workers' compensation benefits as such payment is required by the commissioner of the department of labor and workforce development or by title 50, chapter 6.

SECTION 20. Investigations and Examinations.

(a) The commissioner shall have power to examine and investigate the affairs of every person or insurer in this state in order to determine whether such person or insurer has been or is engaged in any unfair claims practice prohibited by this Act.

(b) In the conduct of an examination, the criteria as set forth in the Market Conduct Examiners Handbook adopted by the National Association of Insurance Commissioners that was in effect when the commissioner exercised discretion to make an examination under or to take other action permitted by this Act shall be used. The commissioner may by rule also employ such other guidelines or procedures as the commissioner deems appropriate.

(c) All testimony, documents and other information submitted to the Commissioner pursuant to this Section, and all records and documents maintained pursuant to this Section shall be privileged and shall not be disclosed pursuant to Sections 10-7-503 or 56-1-602, nor shall they be admissible as evidence in any civil proceeding not brought by the commissioner. The commissioner, within her discretion, may share such documents and information with other state or federal agencies, or with any law enforcement authority.

SECTION 21. Hearings, Witnesses, Appearances, Production of Books, and Service of Process.

(a) Whenever the commissioner shall have reason to believe that any insurer or person has been engaged or is engaging in this state in any unfair claims practice whether or

not defined in this Act, and that a proceeding by the commissioner in respect thereto would be in the interest of the public, the commissioner shall issue and serve upon such insurer or person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than thirty (30) days after the date of the service thereof.

(b) At the time and place fixed for the hearing, the insurer or person shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner requiring the insurer or person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at the hearing by counsel or in person.

(c) Nothing contained in this Act shall require the observance at the hearing of formal rules of pleading or evidence.

(d) The commissioner, at the hearing, may administer oaths, examine and cross examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence or other documents the commissioner deems relevant to the inquiry. The commissioner, may, and upon the request of any party, shall cause to be made a stenographic record of all the evidence and all the proceedings at the hearing. If no stenographic record is made and if a judicial review is sought, the commissioner shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena or to testify with respect to any matter concerning which he may be lawfully interrogated, the Chancery Court of Davidson County or the county where the person resides, on application of the commissioner, may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey any order of the court may be punished by the court as contempt.

(e) Statements of charges, notices, orders and other processes of the commissioner under this Act may be served by anyone duly authorized by the commissioner, either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by the statement, notice, order or other process at the person's residence or principal office or place of business. The verified return by the person so serving the statement, notice, order, or other process, setting forth the manner of service, shall be proof of the same, and the return postcard receipt for the statement, notice, order or other process, registered and mailed as specified, shall be proof of the service of the same.

SECTION 22. Cease and Desist and Penalty Orders, and Injunctions.

(a) If, after hearing, the commissioner finds an insurer has engaged in an unfair claims practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer charged with the violation a copy of the findings and an order requiring the insurer to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion, order:

(1) Payment of a monetary penalty of not more than \$1,000 for each violation but not to exceed an aggregate penalty of \$100,000, unless the person knew or reasonably should have known the person was in violation of this Act, in which case the penalty shall not be more than \$25,000 for each violation, but not to exceed an aggregate penalty of \$250,000 pursuant to hearing; and/or

(2) Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known it was in violation of this Act.

(b) Whenever it appears to the commissioner that any person has violated or is about to violate this Act, or is violating or is about to violate an order lawfully entered by the commissioner pursuant to this Section, the commissioner may, in the commissioner's discretion, bring an action in the chancery court of Davidson County to enjoin such violation and to enforce

compliance with this Act or any rule hereunder or any order lawfully entered pursuant to this Section. The court may not require the commissioner to post a bond.

SECTION 23. Judicial Review of Orders.

(a) An insurer subject to an order of the commissioner under Section 22 or Section 25 may obtain a review of the order by filing in the Chancery Court of Davidson County, within thirty (30) days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be served upon the commissioner, and thereupon the commissioner shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of the petition shall operate as a stay of the order of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing the order of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by clear and convincing evidence, shall be conclusive.

(b) To the extent that the order of the commissioner is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the commissioner. If either party shall apply to the court for leave to introduce additional evidence, and shall show to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to introduce such evidence in the proceeding before the commissioner, the court may order additional evidence to be taken before the commissioner and to be introduced at the hearing in such manner and upon such terms and conditions as the court may deem proper. The commissioner may modify the findings of fact, or make new findings by reason of the additional evidence so taken, and shall file the modified or

new findings that are supported by clear and convincing evidence with a recommendation if any, for the modification or setting aside of the original order, with the return of the additional evidence.

(c) An order issued by the commissioner under Section 23 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time; except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 23b); or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

(d) No order of the commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SECTION 24. Judicial Review by Intervenor. If after any hearing under Section 21 or Section 25, the report of the commissioner does not charge a violation of this Act, then any intervenor in the proceedings may within thirty (30) days after the service of the report, cause a petition for writ of certiorari to be filed in the Chancery Court of Davidson County for a review of the report. Upon review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding the report of the commissioner, constitutes a violation of this Act, and containing penalties pursuant to Section 22

SECTION 25. Penalty for Violation of Cease and Desist Orders. An insurer that violates a cease and desist order of the commissioner and, while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject, at the discretion of the commissioner, to:

(a) A monetary penalty of not more than \$25,000 for each and every act or violation not to exceed an aggregate of \$250,000 pursuant to hearing; and/or

(b) Suspension or revocation of the insurer's license.

SECTION 26. Regulations. The commissioner may, after notice and hearing, promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this Act. The regulations shall be subject to review in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 27. Severability. If any provision of these Acts, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of these Acts, and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SECTION 28. Tenn. Code Ann. Title 56, Chapter 7, Part 1 is amended by adding the following as a new appropriately designated section:

(a) In any action in which a person has made any payments to or on behalf of any claimant prior to trial, such payments shall not be construed as an admission of liability by such person in any action brought to recover for personal injuries or for damage to property.

(b) In the event, however, that such action results in a verdict in favor of the claimant, the defendant shall be allowed to introduce evidence of such payments and the court shall then reduce the amount awarded to the plaintiff by the amount of payments made prior to the date of judgment.

(c) No such payments made by any insurance company shall be construed to be in lieu of or in addition to any limits of liability of such insurance company under any policy of insurance, but such sums paid in advance shall be deemed to have been made pursuant to the limits of the policy and shall be credited to the insurer's obligation to the insured arising from such policy and shall be deducted therefrom.

(d) The making of any advance payments shall not interrupt the running of the statute of limitations on any claim.

SECTION 29. This act shall take effect upon becoming a law, the public welfare requiring it.